IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 581 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AS GOSAI

Versus

GUJARAT STATE WARE HOUSING CORPORATION

Appearance:

1. Special Civil Application No. 581 of 1998

MR KS CHAUDHARI for Petitioner

MR PJ KANABAR for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 27/04/2000

ORAL JUDGEMENT

The disciplinary authority dismissed the petitioner from service by an order dated 3-9-1992. Having felt aggrieved by the order of dismissal, petitioner filed Spl.C.A. No. 6305 of 1994. This Court

by its judgment and order dated 3-8-1996 quashed the dismissal order of the petitioner and directed that the disciplinary authority to proceed with the inquiry against the petitioner, after giving a copy of the inquiry report . It has also been directed that the inquiry will start from the stage after supplying copy of the inquiry report to the petitioner. Learned counsel for the petitioner Mr. Chaudhari submitted that the petitioner was not furnished with the documents during the inquiry stage and therefore, he could not make an effective defence in the case. Learned counsel also submitted that , during inquiry the bills which have been relied upon by the prosecution has not been proved by any handwriting expert. It is submitted by learned counsel for the petitioner that, since the documents have not been examined by handwriting expert it was wrong on the part of the disciplinary authority to come to a conclusion that, the petitioner has forged those documents and misappropriated the money. Learned counsel accordingly submitted that since the inquiry was not properly conducted by the Inquiry Officer, the entire proceedings should be quashed.

2. It is also submitted by learned counsel for the petitioner that, in accordance with the order passed by this Court on 3-8-1996 in Spl.C.A. No. 6305/94, the arrears of suspension allowance has also not been paid to the petitioner.

3. As regards the legality of the proceedings before the Inquiry Officer, I do not think that, there is any scope in the present case to examine those questions. In the earlier case this Court has clearly specified in the order in which manner further inquiry will be held. As per order of this Court passed on 3-8-1996 in the earlier case it has been clearly directed that, the inquiry will be preceded from the stage after giving an inquiry report to the petitioner. Therefore it is only to be seen whether copy of the inquiry report has been given to the petitioner, and whether he was heard by the disciplinary authority. I do not think beyond that stage any other matter can be examined at this stage in the present case. If the petitioner is aggrieved by the proceedings before the Inquiry Officer, he should have submitted the same in the earlier case in Spl.C.A. No. 6305/94. Since he has foregone his right of challenging legality of the proceedings before the Inquiry Officer in the earlier case, I am of the view, at this stage he cannot be permitted to advance this argument in the present case.

4. It is admitted by learned counsel for the

petitioner that the disciplinary authority has furnished a copy of the Inquiry Report to the petitioner. As regards hearing of the petitioner, learned counsel submitted that, it is true that the disciplinary authority has heard the petitioner, but that the petitioner was not properly heard by the disciplinary authority. It is not clear in what respect the petitioner was not properly heard. A copy of the inquiry report has been supplied to him and the disciplinary authority has personally heard the petitioner before passing the dismissal order. I, therefore, do not find any force in the submission of the learned counsel for the petitioner that the petitioner was not properly heard. Learned counsel submitted that the disciplinary authority should have heard the petitioner after supplying the documents which were relied during the inquiry.

5. I have already held that the scope of inquiry in the present case is very limited and neither the disciplinary authority nor this Court can look in to the events prior to the stage of supplying copy of the inquiry report to the petitioner. I therefore do not find any force in the submissions of learned counsel for the petitioner that the petitioner was not properly heard, simply because he was not given the documents which were relied on at the inquiry stage. Such submission has no force and this Court cannot see the legality or otherwise of earlier stage of the proceedings which has already been decided in Spl.C.A. No. 6305/94. In the earlier case the petitioner agitated only on the point that he was not given a copy of the inquiry report and he did not raise any other question, and therefore, now in the present case he cannot be permitted to raise those questions. Consequently, I am of the view that there is no merit in the petition and therefore this writ petition is dismissed. Rule discharged. Interim relief if any shall stand vacated. I make no order as to costs.

Dt: 27-4-2000

(P.K. Sarkar, J)

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